

**AGENCY AGREEMENT FOR COUNTYWIDE
AB 939 IMPLEMENTATION FEE**

This Agreement is made by and among the Cities and Towns of Campbell, Cupertino, Gilroy, Los Altos, Los Altos Hills, Los Gatos, Milpitas, Morgan Hill, Monte Sereno, Mountain View, Palo Alto, San Jose, Santa Clara, Saratoga and Sunnyvale (CITIES) and the County of Santa Clara (COUNTY) on the _____ day of _____ 2003. The term CITIES may refer to CITIES collectively or individually.

RECITALS

WHEREAS, pursuant to Public Resources Code Section 41901, a city, county, or city and county may impose fees in amounts sufficient to pay the costs of preparing, adopting, and implementing an integrated waste management plan; and

WHEREAS, the Board of Supervisors established the Countywide AB939 Implementation Fee effective July 1, 1992 to fund local costs of preparing, adopting, and implementing integrated waste management plans and programs; and

WHEREAS, the Recycling and Waste Reduction Commission of Santa Clara County has determined that a Countywide AB 939 Implementation Fee (Fee) is necessary, pursuant to Public Resource Code 41901, to assist in funding the costs of preparing, adopting, and implementing integrated waste management plans and programs in the fifteen cities and the unincorporated area of the county; and

WHEREAS, the Fee shall be imposed on each ton of waste disposed of at landfills located within the county or taken to non-disposal facilities located within the county and subsequently transported for disposal to landfills located outside of Santa Clara County; and

WHEREAS, state law requires jurisdictions to plan and implement household hazardous waste (HHW) services; and

WHEREAS, HHW programs provide household hazardous waste management services to residents of Santa Clara County which services are necessary to enable jurisdictions to meet the requirements of state law; and

WHEREAS, jurisdictions in Santa Clara County desire to provide safe, convenient, and economical means for residents to properly dispose of HHW in an environmentally safe manner in order to avoid unauthorized or improper disposal in the garbage, sanitary sewer, storm drain system, or on the ground, in a manner which creates a health or environmental hazard. These wastes include, but are not limited to, common household products such as household cleaning products, spot remover, furniture polish, solvents, oven cleaner, pesticides, oil based paints, motor oil, antifreeze and car batteries; and

WHEREAS, the Recycling and Waste Reduction Commission has determined that a Household Hazardous Waste Fee be collected as part of the AB939 Implementation Fee to provide the necessary funding to operate the household hazardous waste programs in Santa Clara County; and

WHEREAS, the County will collect the Fee on behalf of the fifteen cities and the unincorporated area and will apportion the Fee according to the terms of this Agreement.

NOW, THEREFORE, CITIES and COUNTY OF SANTA CLARA AGREE AS FOLLOWS:

1. PURPOSE

The purpose of this Agreement is to state the terms and conditions under which the COUNTY will collect and distribute the Fee of \$3.35 per ton of waste to be disposed. The Fee is divided into two parts 1) a Program Fee of \$1.50 per ton to assist in funding the costs of preparing, adopting, and implementing the integrated waste management plan in the fifteen cities and the unincorporated area of the county; and 2) a HHW Fee of \$1.85 per ton to provide funding to implement the Countywide HHW Program. The Program Fee will be allocated among jurisdictions as described in Exhibit B. The HHW Fee will be allocated to the COUNTY, CITIES, and Countywide HHW Program and Participating Jurisdictions as described in Exhibit C. The Fee shall be imposed on each ton of waste disposed of at landfills located within the county or taken to non-disposal facilities located within the county and subsequently transported for disposal to landfills located outside of Santa Clara County. Non-disposal facilities are defined as those facilities included in the County of Santa Clara Non-Disposal Facility Element (and subsequent amendments to that Element).

2. SERVICES PROVIDED BY COUNTY

COUNTY will collect and distribute the Fee. COUNTY will collect the Fee from landfills and non-disposal facilities listed in Exhibit A, and any landfill or non-disposal facility subsequently permitted, on a quarterly basis using data from tonnage reports filed by landfill and non-disposal facility operators with the County Integrated Waste Management Division. The COUNTY shall require each landfill and non-disposal facility to submit required payment, documentation of tonnages disposed, and state-mandated Disposal Reporting System Reports on a quarterly basis, within 45 days of the end of each calendar quarter. Late submissions and/or payments shall be subject to a late filing penalty and delinquent penalties. Collected funds and any late filing payments and delinquency penalties shall be distributed to CITIES and Countywide HHW Program based on the formula set forth in Exhibits B and C. COUNTY shall not be obligated to distribute funds that COUNTY has been unable to collect from landfill or non-disposal facility operators.

3. ROLE OF CITIES

CITIES shall review the Disposal Reporting System Reports as prepared and submitted by the COUNTY and shall report to COUNTY, with appropriate documentation, errors in waste allocations among jurisdictions within 30 days of receipt.

4. COLLECTION AND USE OF FEE

Each ton of waste will be subject to the Fee at the non-disposal facility or landfill, but not at both locations. Best efforts will be made to prevent tonnage from being assessed a double fee (once at a non-disposal facility and again at a landfill within Santa Clara County). The Program Fee funding share paid to CITIES shall be used to assist in funding the costs of preparing, adopting, and implementing the integrated waste management plan in CITIES and the unincorporated area of the COUNTY. The HHW Fee portion shall assist in funding the costs of each city's share of HHW operations.

5. INSURANCE

Each party shall maintain its own insurance coverage, through third party insurance, self-insurance, or a combination thereof, against any claim, expense, cost, damage, or liability arising out of the performance of its responsibilities pursuant to this Agreement.

6. INDEMNIFICATION

In lieu of and notwithstanding the pro rata risk allocation which might otherwise be imposed between CITIES and COUNTY pursuant to Government Code Section 895.6, the parties agree that all losses or liabilities incurred by a party shall not be shared pro rata but instead the parties agree that pursuant to Government Code Section 895.4 each of the parties hereto shall fully indemnify and hold each of the other parties harmless from any claim, expense or cost, damage or liability arising out of, or in connection with, performance of its responsibilities pursuant to this Agreement.

Additionally, CITY shall indemnify, hold harmless, and defend COUNTY, its officers, agents, and employees with respect to any loss, damage, liability, cost or expenses, including attorney fees, arising from misuse of the Fee distributed to CITIES. COUNTY shall indemnify, hold harmless, and defend CITIES, its officers, agents, and employees with respect to any actions brought by third parties based on COUNTY's negligence in the collection or distribution of said Fees.

7. DISTRIBUTION OF FEE

COUNTY shall distribute the Fee to CITIES and the Countywide HHW Program pursuant to the formulas described in Exhibits B and C within 45 days of receipt of landfill and non-

disposal facility payments and disposal documentation required for calculation of Fee distribution amounts. Distributions shall begin in December 2003, and continue quarterly through August 2006.

8. PARTICIPATION IN THE COUNTYWIDE HHW PROGRAM

CITIES, at their option, may individually participate in the Countywide HHW Program by entering into the AGENCY AGREEMENT FOR COUNTYWIDE HOUSEHOLD HAZARDOUS WASTE COLLECTION PROGRAM. Regardless of whether CITIES enter into the Agreement, CITIES's share of funds collected for Abandoned Waste Disposal Costs will be paid directly to the Countywide HHW Program as described in Exhibit C.

9. LATE PAYMENTS

If Fee payments and disposal documentation are not received from landfill or non-disposal facility operators prior to scheduled distribution of payments to CITIES and the Countywide HHW Program, payment distribution shall be calculated on a pro rata share of monies received. Upon collection, late payments and accrued delinquent penalties, if any, shall be distributed among CITIES and the Countywide HHW Program according to the formula in Exhibits B and C.

10. ACCOUNTING

COUNTY shall maintain records of all transactions related to collection and distribution of the Fee for at least five (5) years after the termination date of this Agreement, unless otherwise required by law to retain such records for a longer period. Such records will be available for inspection upon written request by CITIES, and will include but not be limited to tonnage reports submitted by landfills and non-disposal facilities, waste stream documentation provided by cities, and payments made by the landfills and non-disposal facilities to the COUNTY and by the COUNTY to CITIES.

11. REQUEST FOR REVIEW

In the event CITIES have a dispute regarding the calculation of its share of the Fee, CITIES may request in writing a review by COUNTY within 10 days of receipt of their Fee allocation. The review shall be performed within 30 days of request and results shall be reported to CITIES in writing.

12. EFFECTIVE DATE OF AGREEMENT

This agreement takes effect only upon approval by all fifteen cities and the COUNTY.

13. AMENDMENT

This Agreement may be amended only by an instrument signed by all the parties.

14. INDEPENDENT CONTRACTOR

Each party shall perform responsibilities and activities described herein as an independent contractor and not as an officer, agent, servant or employee of any of the parties hereto. Each party shall be solely responsible for the acts and omissions of its officers, agents, employees, contractors and subcontractors, if any. Nothing herein shall be considered as creating a partnership or joint venture between the parties.

15. TERM OF AGREEMENT

The term of this Agreement shall be from July 1, 2003, to August 31, 2006, or until all funds from the last quarter's Fee payments have been distributed, whichever is later. COUNTY shall bill the operators of the landfills and non-disposal facilities listed in Exhibit A for the Fee commencing with the Quarter ending September 30, 2003. Said landfills and non-disposal facilities will be billed for the Fee through June 30, 2006.

16. EXTENSION OF TERM

This Agreement may be extended in three-year extensions upon written agreement of COUNTY and CITIES.

17. NOTICES

All notices required by this Agreement must be written and will be deemed given when delivered personally or deposited in the United States mail, postage prepaid, return receipt requested, addressed to the other party at the address set forth below or at such address as the party may designate in writing in accordance with this section. See Attachment F for list of City Contacts.

City of _____

Contact: _____

Title: _____

Address: _____

County of Santa Clara

Contact: Manager, Integrated Waste Management Division
 1735 N. First Street, Suite 275
 San Jose, CA 95112

18. CONTROLLING LAW

This Agreement shall be governed and construed in accordance with the laws of the State of California.

19. ENTIRE AGREEMENT

This document embodies the entire Agreement between the parties with respect to the subject matter hereof. No modification of this Agreement shall be effective unless and until modification is evidenced by writing signed by all parties or their assigned designates.

20. COUNTERPARTS

This Agreement may be executed in one or more counterparts, each of which shall be deemed to be an original, but all of which together shall constitute one and the same instrument.

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IN WITNESS WHEREOF, the parties have executed this **AGENCY AGREEMENT
FOR COUNTYWIDE AB 939 IMPLEMENTATION FEE** on the dates as stated
below:

"COUNTY"

COUNTY OF SANTA CLARA,
a political subdivision of the
State of California

By: _____
Donald F. Gage, Chairperson,
Board of Supervisors

Date: _____

ATTEST:

Phyllis Perez, Clerk,
Board of Supervisors

APPROVED AS TO FORM AND LEGALITY:

Kathy Kretchmer Date
Deputy County Counsel

"CITY"

CITY OF _____
a municipal corporation.

by: _____

Title: Date

EXHIBIT A

LANDFILLS LOCATED IN SANTA CLARA COUNTY

Guadalupe Rubbish Disposal Site
Kirby Canyon Sanitary Landfill
Newby Island Sanitary Landfill
Owens–Corning Fiberglas Landfill
Palo Alto Refuse Disposal Area
Zanker Road Landfill
Pacheco Pass Sanitary Landfill

NON-DISPOSAL FACILITIES AND TRANSFER STATIONS LOCATED IN SANTA CLARA COUNTY

City of Palo Alto Green Composting Facility
Material Recovery Systems Facility
Newby Island Compost Facility
Zanker Materials Processing Facility
The Recyclery at Newby Island
San Martin Transfer Station
Sunnyvale Materials Recovery and Transfer Station (SMaRT Station)
Z-Best Composting Facility
GreenWaste Recovery Facility
ComCare Farms Composting Facility
Pacheco Pass Landfill Composting Facility
Butterick Enterprises Recyclery
Premier Recycling Facility

EXHIBIT B

FORMULA FOR DISTRIBUTION OF AB939 PROGRAM FEE

Each jurisdiction located in Santa Clara County and signatory to this agreement will receive \$1.50 per ton of solid waste generated within its jurisdiction and disposed of in landfills or taken to non-disposal facilities located in Santa Clara County for disposal outside of the County, as documented in quarterly reports submitted by the County to the State Disposal Reporting System.

Fees collected from undocumented disposed tonnage, or tonnage originating outside of Santa Clara County, will be distributed according to each jurisdiction's percent of countywide population, according to the latest available population report issued by the California Department of Finance.

EXHIBIT C

COUNTYWIDE HOUSEHOLD HAZARDOUS WASTE PROGRAM HHW FEE (HHW Fee)

1. PROGRAM FUNDING SOURCE

HHW Program services are directly mandated under AB939, which establishes statutory authority to provide for funding to support planning and implementation of integrated waste management programs. The HHW Fee of \$1.85 per ton collected as part of the AB939 Implementation Fee will be the primary source of HHW Program funding.

Funds derived from the HHW Fee will be allocated among four types of HHW service costs as follows:

- A. Fixed Program Costs will be apportioned based on the number of households in each participating jurisdiction. The number of households will be determined at the beginning of each Fiscal Year by statistics compiled by the Department of Finance, Demographic Research Unit in their most recent Report E-1, "Population Estimates for California Cities and Counties."
- B. Abandoned Waste Disposal Cost will be apportioned based on the number of households in all cities and towns in Santa Clara County and in the unincorporated area of the county.
- C. Variable Cost Per Car to provide a base level service to 3% of households in all jurisdictions participating in the AGENCY AGREEMENT FOR COUNTYWIDE HOUSEHOLD HAZARDOUS WASTE COLLECTION PROGRAM (Participating Jurisdictions).
- D. Discretionary Funding will be apportioned based on tonnage generated per Participating Jurisdiction.

2. FIXED PROGRAM COST

Funds will be distributed on a per household basis for fixed program costs. This portion of the funds shall be distributed directly to the Countywide HHW Program except for jurisdictions not participating in the program. Fixed program costs funding will be calculated at \$1.22, \$1.27, and \$1.32 per household for fiscal years 2004 through 2006 respectively. Fixed program costs may include, but are not limited to 4.5 full-time equivalent staff members, facility leasing costs, vehicle lease costs, office supplies, county administrative overhead, training costs, equipment and facility maintenance, union negotiated salary and benefit increases and state mandated facility closure costs.

3. ABANDONED WASTE DISPOSAL COST

Funds shall be distributed on a per household basis for abandoned waste disposal at \$0.17 per household. This portion of the funds shall be distributed directly to the Countywide HHW Program. All jurisdictions throughout the COUNTY contribute to this cost including jurisdictions not participating in the AGENCY AGREEMENT FOR COUNTYWIDE HOUSEHOLD HAZARDOUS WASTE COLLECTION PROGRAM. The abandoned waste disposal cost portion will fund disposal of HHW illegally abandoned at nonprofit charitable reuse organizations. For the purposes of this agreement, the PUBLIC RESOURCES CODE SECTION 41904 defines a nonprofit charitable reuse organizations as follows:

(1) "Nonprofit charitable reuser" means a charitable organization, as defined in Section 501(c)(3) of the federal Internal Revenue Code, or a distinct operating unit or division of the charitable organization, that reuses and recycles donated goods or materials and receives more than 50 percent of its revenues from the handling and sale of those donated goods or materials.

4. VARIABLE COST PER CAR

The Variable Cost Per Car is the cost associated with actual labor, waste disposal, transportation and other services provided to the residents at the County HHW Collection Facilities and Mobile Events. This portion of the funds shall be distributed directly to the Countywide HHW Program except for jurisdictions not participating in the program. The Variable Cost Per Car is estimated to be approximately \$60 per car for Fiscal Year 2004. The estimated cost per car will be adjusted annually to reflect actual service costs. After fixed costs and abandoned waste costs are allocated on a per household basis, the variable cost per car will be used to calculate the costs to service 3% of households across all Participating Jurisdictions. If the level of 3% of households is not reached, the Countywide HHW Program will use the remaining balance of funds, in cooperation with the CITIES, to increase public outreach and/or provide additional services in that jurisdiction the following year.

5. DISCRETIONARY FUNDING

The Discretionary Funding portion will be allocated based on the tons of waste generated within each jurisdiction and after allocation of fixed cost, abandoned waste disposal cost and variable per car cost. Discretionary Funds will be paid as directed by each jurisdiction. Discretionary Funds must be used for HHW purposes. Options for how to spend these funds include, but are not limited to, increasing the number of residents served in the jurisdiction by the Countywide HHW Program, subsidizing curbside used motor oil collection, funding HHW public education, or providing special programs such as door-to-door collection of HHW for the elderly and/or disabled.

6. PROGRAM FUNDING PASS-THROUGH

Annual funding calculations include HHW Fees collected on behalf of all County jurisdictions. CITIES, at their option, may participate in the Countywide HHW Program by entering into the AGENCY AGREEMENT FOR COUNTYWIDE HOUSEHOLD HAZARDOUS WASTE COLLECTION PROGRAM. CITIES NOT participating in the Agency Agreement will receive their pro-rata share of funding received by the COUNTY from the HHW Fee, with the exception of funds for the abandoned waste disposal cost, described above.

If CITIES NOT participating in the AGENCY AGREEMENT FOR COUNTYWIDE HOUSEHOLD HAZARDOUS WASTE COLLECTION PROGRAM desire to permit residents to participate in HHW Program services on an emergency basis, then services to these residents will be provided on a cost recovery basis. A charge equal to the published rates charged to Conditionally Exempt Small Quantity Generators will be billed to the CITIES. A CITIES' representative must call the Countywide HHW Program appointment line to schedule an appointment for the resident. The pro-rata share of liability will be shared as defined in Section 6 of the AGENCY AGREEMENT FOR COUNTYWIDE AB 939 IMPLEMENTATION FEE.